

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

Crl.Rev.Pet.No. 3336 of 2005(B)

REVN. PETITIONER:

**MUTHUSWAMY, RADHA NIVAS,
D.N.65/45, TOLL GATE, VADUTHALA,
KOCHI-23.**

**BY ADV. SRI.T.G.SUNIL (PRANAVAM)
SRI.P.R.JAYAKRISHNAN
SRI.A.BIJU MANOHAR
SRI.ELVIN PETER**

RESPONDENTS:

**1. THE TAHSILDAR, KANAYANNUR,
ERNAKULAM DISTRICT.**

**2. THE DISTRICT COLLECTOR,
ERNAKULAM.**

**3. HENRY, KOLOTH HOUSE,
VADUTHALA, KOCHI.**

**BY ADV. SRI.C.P.RAVIKUMAR
PUBLIC PROSECUTOR SRI.KAMMAPPU FOR R1 & R2**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
06/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Dated this the 6th day of February 2007

ORDER

The counter petitioner in A4 11173/2005 on the file of the Executive Magistrate and Tahsildar, Kanayannur is the revision petitioner. The third respondent filed the complaint alleging that the petitioner is using the ground floor of the a Multistoreyed building as a cattle shed and it is creating nuisance to the persons residing in the neighbourhood. A complaint was filed before the District Collector Ernakulam against the petitioner and the same was forwarded to the Tahsildar, Kanayannur. On receipt of the same the Tahsildar issued a conditional order under section 133(6) directing the petitioner to dismantle the cattle shed within 7 days. The petitioner received the notice on 17-10-2005. He appeared before the Tahsildar and filed a detailed objection on 25-10-2005. The Tahsildar conducted a local inspection on 6-12-2005. Based on the opinion which the Tahsildar formed by conducting the site inspection the order was made absolute on 7-12-2005. Challenging that final order this CrI.R.P is filed

2. The learned counsel appearing for the petitioner has argued that even if the place is used as a cattle shed no proceedings under Section 133 (6) is possible because cow is not a dangerous animal. The evidence

on record shows that on receipt of the conditional order the petitioner appeared and filed an objection. Section 137 of the Cr.P.C provides that if the person on whom the show cause notice is served appears and files objection denying the existence of public right the same is to be enquired first. Thereafter the Magistrate has to conduct an enquiry as provided under section 138 of the Cr.P.C and pass the final order. The impugned order shows that the same was passed by the Magistrate solely based on the subjective satisfaction which he formed by conducting the local inspection. The Tahsildar did not consider whether there is any denial of public right. He did not post the case for enquiry. So the final order passed is illegal and liable to be set aside.

3. In the result this Crl.R.P is allowed. The order passed by the Tahsildar Kanayannur as A4.11173/2005 dated 7-12-2005 making the conditional order passed on 15-10-2005 absolute is hereby set aside. He is directed to take the proceedings back to file and dispose of the same afresh in accordance with law after giving an opportunity to both sides to adduce evidence. The proceedings shall be tried and disposed of as expeditiously as possible at any rate within four months from the date of receipt of a copy of this order.

K.PADMANABHAN NAIR,JUDGE